



The Comptroller General
of the United States

Washington, D.C. 20548

Glass

Decision

Matter of: Southwestern Bell Telecommunications, Inc.
File: B-231822.2
Date: November 17, 1988

DIGEST

1. Protest of agency's interpretation of requirement that solicited telephone system be for government's exclusive official use is dismissed as untimely where protester was informed during discussions of agency's interpretation of the requirement and revised its proposal in response to the agency's interpretation, and protest on this basis was not filed within 10 working days of such agency advice.
2. Protest that agency improperly rejected alternate proposal for failure to comply with solicitation requirement that telecommunication system be for exclusive official government use is denied where solicitation requires the system to be for the exclusive use of the government and the protester does not dispute that its offer did not comply with the solicitation requirement as properly interpreted by agency.

DECISION

Southwestern Bell Telecommunications, Inc. (SWBTI), protests the rejection of its alternate offer under request for proposals (RFP) No. F11624-88-R-0003, issued by the Department of the Air Force for a telecommunications system for Whiteman Air Force Base, Missouri. This system includes the basic digital switching system, attendant consoles, system access terminals, cabling and all other ancillary equipment and software necessary to provide service for a complete telecommunication system.

We dismiss the protest in part and deny it in part.

The RFP was issued on February 26, 1988, and technical proposals were due on May 6. The RFP included a requirement that all cable lines or other equipment be for the exclusive use of the Air Force Base. SWBTI submitted two proposals. SWBTI's basic proposal was determined to be technically acceptable and is currently still under consideration. In

043950/137363

its alternate proposal, SWBTI, through its subcontractor, Southwestern Bell Telephone Company, proposed to provide a central office-based switching service ("Centrex") through use of a partitioned switch located on Whiteman Air Force Base that would allegedly allow all security needs of the Air Force to be met, but also allow the remainder of the switch to be used for other non-official customers on the base. SWBTI states that as a regulated telephone utility it may not limit the use of its facilities to any particular customer.

After initial discussions, SWBTI's alternate proposal was determined to be technically unacceptable for failure to provide the system for exclusive, official government use. The Air Force specifically found that SWBTI's proposed assignment of the remaining capacity of the switching system to nongovernment telephone users on the base did not comply with the "exclusive use" requirement of the solicitation. In discussions, SWBTI was earlier made aware that the agency interpreted the solicitation as requiring exclusive, official use by the government of all switching and other telecommunication system equipment. In response to the Air Force concerns, SWBTI amended its alternate proposal on June 29, 1988, to include a blanket statement that its telecommunication system would be for the exclusive use of the Air Force base "for official use only." Nevertheless, SWBTI's technical proposal still indicated that the switching system would not be for official use only.^{1/} SWBTI was notified of the exclusion of their alternate proposal from the competitive range by letter dated July 21. SWBTI filed its protest with our Office on August 4.

Our Bid Protest Regulations require that protests that are not based on alleged solicitation improprieties be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1988). Here, even if we assume that the solicitation language regarding exclusive use reasonably could have been interpreted as allowing the contractor to offer a switching system which could be used for both official and unofficial purposes, the record indicates that SWBTI knew, as a result of discussions, no later than June 29, when it submitted its revised offer, of the agency's interpretation of exclusive

^{1/} SWBTI's revised technical proposal still offered to dedicate only a portion of the telephone switching unit exclusively for official use, while the remaining portion could be rented for other than official use.

use as meaning solely for official government use.^{2/} Thus, SWBTI's protest to our Office of the Air Force's interpretation, filed on August 4, more than 10 working days after it knew of the agency's interpretation as confirmed in its June 29 revised offer, is untimely and will not be considered.

In any event, we find that the protester's interpretation is unreasonable. There are three solicitation provisions that require "exclusive use," two of which specifically require that certain equipment shall be for the exclusive use of the government. The solicitation at paragraph H-20 requires that any cable system provided is for the exclusive use of the Air Force base and the contractor shall not use the cable, lines or any equipment installed under the contract. In addition, paragraphs 3.2.1.9 of the equipment performance specification and 3.2.3.4 of the statement of work require that the contractor shall provide a system access terminal for the exclusive use by the government for accessing, changing, and displaying/printing administrative, traffic, and call detail data. Although the protester, while ignoring the other solicitation provisions, interprets paragraph H-20 to mean exclusive use of the Air Force base generally, with no distinction between government and nongovernment users located on the base, this provision also states that the contractor shall not use the cable, lines, or any equipment installed under this contract. In our view, this language clearly indicates an intent that the cable, lines and equipment to be installed under this contract were not to be used by the contractor or for other unofficial use.

Concerning the agency's rejection of SWBTI's proposal, we find it was consistent with the solicitation terms and was reasonable under the circumstances. Although the protester states in its revised alternate proposal that its system would be provided for the exclusive use of the government, it is undisputed that its alternate proposal provides for use by both official and non-official users; thus, the protester's offer clearly did not meet the requirement for exclusive official use and properly was rejected.

In this regard, the Air Force states that its minimum need is for a system with a low technical risk within the mandate of the "National Communications System" created by Executive Order 12472, 49 Federal Register 13471 (1984). The order requires a telecommunications system which provides for

^{2/} In fact, the Air Force states that the protester knew of the agency's interpretation as early as March 13, 1988.

interoperability, restorability, and security to obtain, to the maximum extent practicable, the survivability of the national telecommunications system in the event of emergency or crisis. The Air Force advises that access to the system by unofficial on base personnel raises security concerns. Specifically, SWBTI's alternate proposal provides the government with use of only a portion of the telephone switching unit. The Air Force indicates that permitting unofficial use of the other portion of the switch could permit a security breach through unauthorized access to the government system. Moreover, since the switch is basically a computer system, unauthorized programmers with access to the unofficial portion of the switch potentially could disrupt the entire base communications. We have previously held that military readiness and security considerations to meet possible wartime or emergency conditions is an actual need justifying restrictions on competition in appropriate circumstances. See Southwestern Bell Telephone Co., B-225375, Dec. 22, 1986, 86-2 CPD ¶ 703; Pacific Sky Supply, Inc., B-221375, Apr. 3, 1986, 86-1 CPD ¶ 320; General Telephone Co. of California, B-189430, July 6, 1978, 78-2 CPD ¶ 9. Given the mandate of Executive Order 12472 and agency security needs, we do not think the Air Force should have to comprise its critical needs by accepting a proposal which is not consistent with its telecommunications security requirements.

We dismiss the protest in part and deny it in part.



James F. Hinchman

James F. Hinchman
General Counsel